

REMARKS

Reconsideration of this application is respectfully requested. Upon entry of the foregoing amendment, claims 60 and 63-75 are pending in the application, with claims 60, 63, 64, 67, 69, 73 and 75 being the independent claims.

The Finality of the Office Action is Improper

In the Office Action, the Examiner states that “[s]ince the above rejections and the claims they reject are identical to the rejections and claims rejected in the previous rejection” the finality of the Office Action is appropriate. Applicants respectfully disagree. It is not proper to “make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.” M.P.E.P. 706.07(b).

The amendment filed on April 20, 2004 in response to a final rejection was denied entry because the proposed amendments “raise new issues that would require further consideration and/or search” (see the Advisory Action mailed May 25, 2004). For at least this reason, the finality of the Office Action is improper. In the event the Examiner does not enter the current amendment and issue a Notice of Allowance, Applicants respectfully request that the finality of the Office action be withdrawn.

The Claims are Patentable over Jones and Harvill

Claims 60, 62, 65, 66, 72, 73, 74 and 76-78 were rejected under 35 U.S.C. 102(b) as being anticipated by the U.S. Patent No. 3,263,824 to Jones et al. (“the Jones patent”). Claims 60, 65, 70, 71, 73, 74, 77 and 78 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,986,643 to Harvill (“the Harvill patent”) in view of the Jones patent.

Claim 60 has been amended to include the subject matter of dependent claim 61, which was indicated as allowable. Claim 63, which was indicated as being allowable, has been rewritten in independent form to include the subject matter of claim 60 (prior to the current amendment) and intervening claim 62 (previously pending). Claim 64, which was indicated as being allowable, has been rewritten in independent form to include the subject matter of claim 60 (prior to the current amendment) and intervening claim 62 (previously pending). Claim 67, which was indicated as being allowable, has been rewritten in independent form to include the subject matter of claim 60 (prior to the current amendment) and intervening claim 66. Claim 69, which was indicated as being allowable, has been rewritten in independent form to include the subject matter of claim 60 (prior to the current amendment) and intervening claim 66. Claim 73 has been amended to include the subject matter of claim 76 (previously pending), which was indicated as allowable. Claim 75, which was indicated as being allowable, has been rewritten in independent form to include the subject matter of claim 73 (prior to the current amendment) and intervening claim 74.

Accordingly, independent claims 60, 63, 64, 67, 69, 73 and 75 are allowable over the cited references. Based at least on their dependence upon independent claims 60, 63, 64, 67, 69, 73 or 75, dependent claims 65, 66, 68, 70-72 and 74 are also allowable. Applicant has amended the claims to advance prosecution of this application and to not acquiesce to the Examiner's rejections. Applicant reserves the right to pursue claims of the same or different scope in continuing applications

Conclusion

Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

Prompt and favorable consideration of this Amendment is respectfully requested.


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